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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Iraq

First periodic report on the situation of human rights in Iraq submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 15 of Commission resolution 1995/76

CONTENTS

		Paragraphs	Page
Introduction		1 - 4	2
I.	REVOLUTION COMMAND COUNCIL DECREES No. 61 AND No. 64	5 - 13	2
II.	THE CONTEXT OF THE DECREES	14 - 18	5
III.	CONCLUSIONS	19	6
Annex:	Text of the Decrees		7

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Introduction

1. In its resolution 1995/76 of 8 March 1995, the Commission on Human Rights decided to extend for a further year the mandate of the Special Rapporteur on the situation of human rights in Iraq. That decision was approved by the Economic and Social Council in its decision 1995/286 of 25 July 1995. In paragraph 15 of resolution 1995/76 the Commission requested the Special Rapporteur to report periodically on the situation of human rights in Iraq.

2. The Special Rapporteur submits the present report at this time in response to notes verbales addressed by the Government of Iraq, through its Permanent Mission in Geneva, to relevant Special Rapporteurs and working groups of the Commission on Human Rights transmitting for their consideration the texts of two recent decrees of the Revolution Command Council which grant amnesty to specified categories of persons. At the same time, the Special Rapporteur received, from especially interested persons and persons directly affected by the decrees, comments on the significance of the decrees such that the Special Rapporteur has felt obliged to study them and to submit the texts to the Commission together with his analysis of their importance.

3. The decrees in question are Revolution Command Council Decrees No. 61 and No. 64, the full and authentic texts of which were received by the Special Rapporteur in their original Arabic version as a result of the above-mentioned notes verbales dated 28 July 1995 and 2 August 1995, respectively.

4. Upon analysis from the perspective of human rights, Decrees No. 61 and No. 64 demonstrate considerable shortcomings in terms of their provisions and in terms of the general context of their promulgation.

I. REVOLUTION COMMAND COUNCIL DECREES No. 61 AND No. 64

5. Decrees No. 61 and No. 64 were promulgated in the last part of July 1995. According to the note verbale dated 28 July 1995 from the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights, Revolution Command Council Decree No. 61, which bears the signature of Saddam Hussein as Chairman of the Council and entered into force on 22 July 1995, "remits the remainder of the sentences of Iraqi prisoners and detainees, commutes death sentences to life imprisonment and pardons persons liable to the penalty of amputation of the hand or the auricle of the ear". According to the note verbale dated 2 August 1995 from the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights, Revolution Command Council Decree No. 64, which bears the signature of Saddam Hussein as Chairman of the Council and entered into force on 30 July 1995, grants "a general amnesty to Iraqis living in or outside Iraq in respect of the penalties imposed on them following their conviction for political reasons". However, upon studying the texts of the Decrees, it is clear that both contain significant implicit and explicit conditions and exclusions which substantially reduce their importance and raise questions about their underlying aims. The full texts of the Decrees are reproduced in the annex to the present report.

6. The content of Decrees No. 61 and No. 64 may be best appreciated by what they do not constitute: they do not constitute abrogation of any of the laws

under which offences (so-called "political" or otherwise) have been established; they do not constitute conferral of pardons upon any of those convicted or sentenced; they do not constitute amnesties, pardons or reductions of prospective sentences for the very many who are held in detention (with or without charge) and have not yet been convicted or sentenced. Indeed, the issue of abrogation is of basic importance since, in the absence of such a fundamental change in the laws, anyone benefiting from the amnesties could well be subject to the same punishments again. In fact, paragraph IX of Decree No. 61 makes this explicit by providing that "anyone who, after benefiting from the remissions provided for in this Decree, subsequently commits a similar deliberate felony or misdemeanour shall become liable to enforcement of the remitted penalties". It is precisely the existence of several repressive Iraqi laws which quells freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. This repression will not be affected by the latest amnesty decrees. It is for this reason that the Special Rapporteur has previously called for the abrogation of such repressive laws as those establishing the offence of "insulting" the leadership and institutions of government and the Ba'ath Party, the granting of impunity for those causing harm to the person or property of "subversives", "saboteurs" and other perceived opponents of the Government or the Ba'ath Party, and the inhuman penalties of amputation and disfigurement examined by the Special Rapporteur in previous reports. The Special Rapporteur's recommendations have been endorsed by both the Commission on Human Rights and the General Assembly. In the absence of abrogation of existing repressive laws, the effect of the so-called "amnesty" decrees (whether conditional or not) cannot be considered a step towards liberalization of the governmental system in accord with the obligations undertaken by the Government of Iraq.

7. With regard to the wording of the Decrees, both contain preambular provisions which heavily prejudice application of the Decrees. Most importantly, both Decrees begin with references to the address delivered by President Saddam Hussein on 17 July 1995 in celebration of the anniversary of the Ba'ath Revolution. The first preambular paragraph of Decree No. 61 specifies that the object of the amnesty is to enable "persons who had deviated ... to duly rectify their errors and return from the abyss of deviationism to the firm base of virtue and patriotism". In the same sense, Decree No. 64 enables "every citizen who has defaulted on his patriotic obligation ... to reshoulder the burden of patriotic honour and embody the concepts of national struggle". The obligations to "return" and "reshoulder" are then explicitly linked in Decree No. 64 to the "concepts of salvation, noble patriotism, glory and pan-Arab concepts that our nation requires". Thus, it is clear that application of the amnesties is conditioned upon belief and behaviour in conformity with the tenets of the Ba'ath Party; evidently, many potential beneficiaries would be required to compromise the integrity of their own beliefs. In this sense, the amnesties become very limited, especially with regard to those persons convicted or sentenced for "political" offences, i.e. those who have suffered sanctions precisely because they have not conformed their belief or behaviour to that of the Ba'ath Party. It is

therefore not surprising that Decree No. 64 concerning "political" offences places especially heavy emphasis in its preambular part on conditions which are clearly aimed at limiting its application.

8. Only with proper attention to the preambular conditions of the Decrees can the conditions expressed in the operative paragraphs of the Decrees be fully appreciated. For example, paragraph II of Decree No. 61 stipulates that reductions of sentences will apply only in such cases where the relatives of those imprisoned will "undertake to ensure their good conduct" and "provided that the said undertaking is endorsed by a member of the Arab Ba'ath Socialist Party". Similarly, paragraph VI gives advantage to those who have "obtained an understanding of the revolutionary course of action", while paragraph VIII, subparagraph 3, effectively conditions exemption from applicable amputation decrees upon repentance. Moreover, it is to be observed that the Decrees introduce considerable opportunity, in the application of these conditions for arbitrariness and abuse at the hands of undoubtedly biased persons. For example, exactly what conduct is to be considered "good" and according to whom? Further, in terms of the administration of the criminal justice system, one may wonder on what basis members of the Arab Ba'ath Socialist Party are to play a determinative role (and what they may seek to extract from potential beneficiaries in exchange for their endorsement).

9. On the same subject of arbitrariness, the Special Rapporteur notes that paragraph VI of Decree No. 61 rather oddly stipulates benefits for those "who have memorized four of the longer chapters of the Holy Qur'an and obtained an understanding of the revolutionary course of action": who is to judge whether those criteria are met, and on what basis?

10. With special attention to the many conditions and exclusions contained in the Decrees, it must be observed that large numbers of persons apparently addressed by the Decrees would not in fact benefit from them. For example, the Decrees apply to persons "convicted" or "sentenced", presumably in a formal juridical sense subsequent to court proceedings and orders. However, it is especially relevant that large numbers of persons remain detained in Iraq, and are subject to punishment, in the absence of formal or proper convictions or sentences. These persons would not benefit from the Decrees.

11. Another limiting aspect of Decree No. 64 is that it expressly applies only to "citizens" and "Iraqis" rather than anyone having been found guilty of commission of the offences irrespective of nationality. The application of paragraphs II and III of the Decree are thus discriminatory since they exclude application to non-nationals. This is especially significant in so far as the Government has stripped hundreds of thousands of persons of their "Iraqi" nationality, asserting that they are of "Persian ancestry".

12. Regarding the explicit exclusions to be found in the Decrees, it is to be noted that persons convicted of "espionage" are excluded from application of the Decrees. This is a particularly important exclusion because so many of the laws of Iraq refer to "espionage" and because that crime, as defined therein, applies to a wide variety of behaviour.

13. Finally, there are evident shortcomings in Decree No. 61 as regards the continuing effects of decrees prescribing amputation and branding.

Specifically, paragraph III of Decree No. 61 exempts from the penalty of amputation of the hand persons who have served two years in custody or detention; presumably, those having served less than two years will be subject to such amputation, which normally is applicable upon conviction. In addition, since paragraph VIII, subparagraph 3, effectively exempts from amputation of the auricle of the ear only persons who have given themselves up "repentantly", presumably those who refuse to do so will suffer that inhuman and degrading punishment.

II. THE CONTEXT OF THE DECREES

14. The import of Decrees No. 61 and No. 64 can only be fully understood in the light of the legal and political situation which prevails in Iraq. The Special Rapporteur has commented upon this order in several previous reports, in particular in his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/58, at paras. 159-184). In addition, to appreciate the significance of the Decrees an understanding of the present context in which the Decrees have been promulgated is necessary.

15. In analysing the Decrees, the Special Rapporteur cannot escape considering the historical experience within Iraq in relation to many previous amnesty decrees. Testimony and reports have consistently indicated that persons who returned to Iraq in order to benefit from amnesties, or did so within the country, were, at a minimum, subject to regular surveillance and frequent interrogations thereafter. As such, they remained effectively penalized and without the enjoyment of genuine liberty which is implied by an "amnesty" decree. Certainly, they were not free to hold or express opinions contrary to the official doctrine, nor to associate freely in this regard. Indeed, in several reported cases, persons who returned or surrendered were subsequently arrested; sometimes they were convicted and sentenced for certain crimes, and sometimes they simply disappeared.

16. In view of the historical experience, one particularly disconcerting provision in Decree No. 64 is that contained in paragraph VII, which effectively requires those amnestied to report to the authorities: those within the country must contact the competent authorities in order to benefit, while those arriving from abroad will undoubtedly make such contact at ports of entry. This provision implies a kind of surrender of the prospective beneficiaries and would certainly facilitate, at a minimum, subsequent surveillance. It is, moreover, an unnecessary requirement should there be no ulterior motives since no further pursuit or effect should be forthcoming.

17. The most important contextual consideration for analysing the recent amnesty decrees is that of the overall legal and political order. So long as powers of arbitrary arrest, detention and imprisonment exist, "amnesties" will inspire little confidence. This is especially so for "political" offences while decrees such as Decree No. 840 of 4 November 1986 continue to make critics and insulters of the President, the Ba'ath Party and institutions of government subject to the death penalty, and so long as Ba'ath Party members are granted impunity for any harm done to property or persons (including death) while pursuing opponents of the Government. Put simply, while there is no effective rule of law in Iraq, there will be little confidence in the reliability of "amnesty" decrees.

18. The above assessment is not merely that of the Special Rapporteur. He has received several communications from expatriate Iraqis and others who simply do not believe that they would be secure upon return to Iraq pursuant to the Decrees. Essentially, they do not, and cannot afford to, trust the Iraqi authorities. Rather, they reiterate the need for great change in the legal and political order within Iraq which would effectively ensure respect for human rights under the rule of law. Indeed, perhaps the most striking critique of the amnesty decrees is to be found in the refusal of the President of Iraq's two daughters to return to Iraq after having recently fled to Jordan where they sought, and received, political asylum.

III. CONCLUSIONS

19. Upon analysis of Revolution Command Council Decrees No. 61 and No. 64, the Special Rapporteur concludes that the heavy conditions set out in Decrees No. 61 and No. 64 greatly reduce their value. Moreover, in the absence of great change in the legal and political order of Iraq, especially the abrogation of repressive laws quelling the freedoms of thought, information, expression, association and assembly, Decrees No. 61 and No. 64 warrant virtually no confidence.

Annex

TEXT OF THE DECREES

Document 1

[Original: Arabic]

In the Name of God, the Merciful, the Compassionate

Republic of Iraq
Revolution Command Council
Decree No. 61
dated 24 Safar 1416 A.H.
22 July 1995

Decree

Pursuant to the humanitarian and national pedagogical content of the address delivered by President Saddam Hussein, our leader, on the twenty-seventh anniversary of the outbreak of the glorious revolution of 17-30 July in which he offered an opportunity for persons who had deviated for one reason or another, or under the influence of satanic temptation, to duly rectify their errors and return from the abyss of deviationism to the firm base of virtue and patriotism,

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council hereby promulgates the following decree:

I. The remaining periods of the sentences of Iraqi prisoners are remitted in the case of the following persons:

1. Anyone who has served 3 years of a prison sentence exceeding 10 years.

2. Anyone who has served 2 years of a prison sentence not exceeding 10 years.

3. Anyone who has served one year of a minor prison sentence not exceeding three years.

II. 1. The remainder of the sentences of Iraqi detainees shall be remitted if their relatives undertake to ensure their good conduct, provided that the said undertaking is endorsed by a member of the Arab Ba'ath Socialist Party.

2. The provisions of section I of this Decree shall apply to persons detained for acts of murder.

III. Persons sentenced to a penalty of amputation of the hand shall be exempted from this penalty if they have spent two years in custody or detention.

IV. The amnesty shall cover persons convicted prior to the entry into force of this Decree when they have completed the periods referred to in sections I, II and III of this Decree.

V. 1. The amnesty provisions contained in sections I, II and IV of this Decree shall not apply to persons convicted of acts of murder unless a conciliation has been reached with the relatives of the victim.

2. The relatives of the victim mean the latter's legal heirs.

VI. The periods specified in sections I and III of this Decree shall not apply to prisoners or detainees who have memorized four of the longer chapters of the Holy Qur'an and obtained an understanding of the revolutionary course of action.

VII. Death sentences which have been handed down and become final prior to the entry into force of this Decree shall be commuted to life imprisonment.

VIII. 1. The measures taken against anyone who has committed the offence of desertion, absenteeism or evasion of military service shall be discontinued definitively if he gives himself up repentantly or if he is arrested prior to the entry into force of this Decree.

2. The provisions contained in paragraph 1 of this section shall apply to all deserters, absentees or evaders of military service who give themselves up within two weeks from the date of entry into force of this Decree if they are inside Iraq or within one month if they are outside Iraq.

3. Persons sentenced to a penalty of amputation of the auricle of the ear are exempted from this penalty.

IX. Anyone who, after benefiting from the remissions provided for in this Decree, subsequently commits a similar deliberate felony or misdemeanour shall become liable to enforcement of the remitted penalties.

X. The amnesty provided for in this Decree shall not apply to prisoners and detainees who have been convicted of the following offences.

1. Drug-related offences.

2. Espionage.

3. Murder associated with robbery.

4. Embezzlement or theft of State property.

5. Assaults on officials or public servants during or because of their discharge of their duties.

6. Bribery.

7. Rape.

8. Sodomy.

9. Incest.

XI. The President's Chef de Cabinet shall issue the instructions needed to facilitate the implementation of the provisions of this Decree.

XII. This Decree shall enter into force on the date of its promulgation.

(Signed): Saddam Hussein
Chairman of the Revolution
Command Council

Document 2

[Original: Arabic]

In the name of God, the Merciful, the Compassionate

Republic of Iraq
Revolution Command Council
Decree No. 64
Date of Decree: 3 Rabi I 1416 A.H., 30 July 1995

Decree

Inspired by the humanitarian, educative and patriotic principles emphasized by the Leader, President Saddam Hussein, in his historic address delivered on 17 July of this year, and believing that every zealous citizen will fulfil his obligation to resist backwardness and its causes and to develop our great Iraq for the patriotic motives personified by the July revolutionaries,

Convinced that every citizen who has defaulted on his patriotic obligation due to reduced ability to bear the heavy burden or weakness in the face of the mirage of illicit temptation is able to reshoulder the burden of patriotic honour and embody the concepts of national struggle if he so wishes and if he places his trust in God,

Given the Revolution's eagerness to play its role of helping anyone who needs assistance to combat his own weakness and who harbours no illusion concerning his capabilities, so that anyone who has strayed from the right path can return to his kin and his people and form an active and intrinsic part thereof,

Affirming that such an opportunity is available today to those who have erred and that the doors of honour and virtue are open to those who honestly and resolutely wish to turn over a new page so that the future course of the Revolution will remain as it was at the beginning, imbued with the concepts of salvation, noble patriotism, glory and the pan-Arab concepts that our nation requires from all those who are eager to be among its dutiful sons,

In accordance with the provisions of article 42, paragraph 1, of the Constitution,

The Revolution Command Council hereby decrees as follows:

I. A general amnesty is granted in respect of the penalties imposed on Iraqis living in or outside Iraq who have been convicted for political reasons.

II. The legal measures taken against Iraqis living in or outside Iraq in respect of offences committed for political reasons shall be halted definitively.

III. No legal measures shall be taken against Iraqis living in or outside Iraq in respect of acts or offences committed for political reasons prior to the entry into force of this Decree and no charges shall be brought against them in respect of those acts or offences.

IV. The persons covered by the provisions of paragraphs I and II of this Decree shall be released unless they were convicted or detained on other legal grounds.

V. The provisions of paragraphs I, II and III of this Decree shall not apply to persons who have committed the following offences, even in association with the offences mentioned in those paragraphs:

1. Espionage.

2. Wilful murder.

3. Theft of State property.

4. Rape.

VI. Sequestered property belonging to persons covered by the amnesty granted under the terms of this Decree shall be returned to them.

VII. The persons covered by the provisions of paragraphs I, II and III of this Decree, if they are outside Iraq, must return to Iraq within two months from the date of its entry into force or, if they are inside Iraq, must contact the competent authorities within one month from the date of its entry into force.

VIII. This Decree shall enter into force with effect from the date of its promulgation.

Saddam Hussein
Chairman of the Revolution
Command Council